IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 5910 OF 2004

Mr. Omkar M. Sharma ...Applicant.

V/s

State of Maharashtra
and Anr. ...Respondents.

Mr. N.P. Bhavsar for the applicant.

Mr. Niranjan Shimpi for Respondent No.2.

Mr. D.P. Adsule for the State.

CORAM: V.M. KANADE, J.
DATE : 1st March, 2005

P.C.

1. Heard the learned Counsel for the petitioner and

the learned counsel for the respondent No.2.

2. Petitioner has filed this Petition under section 482 of the Criminal Procedure Code for quashing the process which is issued by the Chief Judicial Magistrate Court No.1, Solapur in S.T.C. No.35 of 1997.

3. The learned Counsel appearing on behalf of the petitioner submits that the statutory notice which has been given by the complainant is defective and, as such, no cognizance could have been taken by the Magistrate of the complaint filed under section 138 of the Negotiable Instruments Act. 4. The learned

Counsel submits that in para 3 of the statutory notice, the complainant has stated that an amount of Rs 4,27,947/- should be paid to him though the cheque was issued for an amount of Rs 89,000/- only. He submitted that in view of this averment in the complaint, there is noncompliance of the provisions of section 138 sub-clause (b) and the complaint is liable to be quashed. In support of the said submission he relied on the judgment of the Apex Court in the case of **Indira Vs. Dr. G. Adinarayana** reported in **AIR 2003 SC 4689**.

4. I am unable to accept the submissions made by the learned Counsel appearing on behalf of the petitioner. On perusal of the statutory notice, it can be seen that in para 3, it is specifically stated that the applicant should pay an amount of Rs 4,27,947 including the amount of dishonoured cheque. Thus, there is no ambiguity in the notice and the petitioner was called upon to pay the amount of the dishonoured cheque. The ratio laid down in the case of Indira (supra), therefore, is not applicable to the facts of the present case. In any event, this point can be decided at the final hearing of the trial and, therefore, no case is made out for interfering with the order of issuing process. Criminal application,

is therefore, rejected. Hearing of the trial is expedited. The learned Magistrate is directed to decide the trial as expeditiously as possible and, in any case, within three months.

5. All concerned to act on the copy of this order duly authenticated by the Registry.

V.M. KANADE, J.